IN THE SUPREME COURT OF THE STATE OF DELAWARE

MANUEL NIEVES,	§	
	§	
Defendant Below-Appellant,	§	No. 722, 2009
	§	
	§	
v.	§	Court Below—Superior Court
	§	of the State of Delaware,
STATE OF DELAWARE,	§	in and for New Castle County
	§	Cr. ID 0107022700
Plaintiff Below-Appellee.	§	
	§	

Submitted: April 16, 2010
Decided: June 24, 2010

Before **STEELE**, Chief Justice, **JACOBS**, and **RIDGELY**, Justices.

O R D E R

This 24th day of June 2010, upon consideration of the parties' briefs and the record on appeal, it appears to the Court that:

(1) The appellant, Manuel Nieves, filed this appeal from the Superior Court's denial of his second motion for postconviction relief. The Superior Court concluded that Nieves' motion was untimely and that he had not established a miscarriage of justice sufficient to overcome the procedural bar. After careful consideration of the parties' positions, we affirm the Superior Court's judgment.

(2) The record reflects that a Superior Court jury convicted Nieves in March 2002 of thirty-two criminal charges, including twenty counts of first degree rape. The victim, Nieves' eight-year-old goddaughter, testified against him at trial. The

Superior Court ultimately sentenced Nieves to 322 years in prison. This Court affirmed Nieves' convictions and sentence on direct appeal.[1] Thereafter, the Superior Court denied Nieves' first motion for postconviction relief, which was affirmed on appeal.[2]

(3) In November 2009, Nieves filed his second motion for postconviction relief. Nieves argued that the three-year time limitation of Superior Court Criminal Rule 61(i)(1)[3] does not bar his claim for postconviction relief because of a miscarriage of justice. Specifically, Nieves argues that the United States Supreme Court, in *Crawford v. Washington*,[4] changed the law regarding the admissibility of a witness' out-of-court testimonial statement. Nieves argues that the retroactive application of the holding in *Crawford v. Washington*, which he asserts is mandated by the United States Supreme Court's decision in *Danforth v. Minnesota*,[5] would result in a finding that Nieves was denied due process at his 2002 trial because the

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[1] *Nieves v. State*, 2003 WL 329589 (Del. Feb. 11, 2003).

[2] *Nieves v. State*, 2005 WL 1200861 (Del. May 18, 2005).

[3] Because Nieves' convictions became final before July 1, 2005, when Rule 61(i)(1) was amended to reduce the limitations period to one year, he was subject to the then-existing three-year limitations period.

[4] 541 U.S. 36 (2004). The United States Supreme Court held in *Crawford v. Washington* that the admission at trial of a witness' out-of-court testimonial statement violates the Confrontation Clause *unless* the witness is unavailable to testify at trial and the defendant had a prior opportunity for cross-examination.

[5] 552 U.S. 264 (2008). In *Danforth v. Minnesota*, the United States Supreme Court held that the general proscription against the retroactive application of new constitutional rules of criminal procedure, like the new rule announced in *Crawford*, does not constrain the authority of state courts, when reviewing their own state criminal convictions, from giving broader retroactive effect to new rules of criminal procedure.

Superior Court allowed the admission of the victim's out-of-court statements to the child advocate.

(4) After careful consideration of the parties' respective positions on appeal, we find it manifest on the face of Nieves' opening brief that his appeal is without merit. It is unnecessary for us to address the issue of retroactivity because it is clear that the rule announced in *Crawford v. Washington* has no application whatsoever to Nieves' case. As this Court previously has held, Confrontation Clause issues are implicated only "where the declarant does not testify at trial, and either the declarant is not unavailable or the defendant did not have a prior opportunity to cross-examine the declarant."[6] Unlike the witness in *Crawford*, the victim-witness in Nieves' case testified at trial and was subject to cross-examination. Accordingly, we find no error in the Superior Court's conclusion that Nieves' second motion for postconviction relief was untimely and that Nieves' had failed to establish a miscarriage of justice in order to overcome this procedural hurdle.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/Henry duPont Ridgely
Justice

[6] *Sanabria v. State*, 974 A.2d 107, 117 (Del. 2009) (citing *Crawford v. Washington*, 541 U.S. 36, 68 (2004)). *See also Wilkinson v. State*, 2009 WL 2917800 (Sept. 14, 2009).